

FILED

AUG 01 2008

PATRICK E. DUFFY, CLERK

By DEPUTY CLERK, MISSO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

TIMOTHY DEHERRERA,)	CV 07-30-H-DWM-RKS
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
DENISE DEYOTT, et al.,)	
)	
Defendants.)	
_____)	

Plaintiff Deherrera has filed an Amended Complaint under 42 U.S.C. § 1983 alleging discrimination, harassment, First Amendment violations, and violations of prison policy. Plaintiff is incarcerated at the Montana State Prison. He was instructed by Order dated January 29, 2008 to file an Amended Complaint in which he sets forth the factual basis for each of his claims. Deherrera alleges that he was denied delivery of letters and magazines sent to him in compliance with the prison's policies; that his legal mail was not opened in his presence; that the

delivery of some packages was unreasonably delayed; and that the Defendants discriminated against him by refusing to deliver to him magazines relating to his Mexican heritage. Plaintiff also alleges that the Defendants threatened to block his wife's phone calls if she continued to call the prison. Some Defendants named in the Complaint are not named in the Amended Complaint.

United States Magistrate Judge Keith Strong conducted preliminary screening of the Amended Complaint as required by 28 U.S.C. § 1915(e)(2). Under that statute, the court engages in a preliminary screening to assess the merits of the claims and identify cognizable claims, or dismiss the complaint or any portion thereof if the complaint is frivolous, malicious, or fails to state a claim upon which relief can be granted.

Judge Strong issued Findings and Recommendations in this matter on June 20, 2008. Judge Strong ordered that the mail claims be served, and recommends dismissal of the Plaintiff's claim that Defendants threatened to block his wife's phone calls. The Magistrate recommends dismissal of the phone call claim because it occurred after the filing of this action and therefore is not exhausted as required by 42 U.S.C. § 1997e(a).


Plaintiff Deherrera did not timely object and so has waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court reviews the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction

that a mistake has been committed." United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000). I can find no clear error with Judge Strong's recommendation and therefore adopt it in full.

Accordingly, IT IS HEREBY ORDERED:

1. The claims against Defendants Myron Beeson, Jane Doe (correctional officer), Jane Doe (mail room employee), and John Doe (property officer) are DISMISSED.
2. Plaintiff's claim alleging threats arising from his wife's phone calls is DISMISSED WITHOUT PREJUDICE for failure to exhaust administrative remedies.

DATED this 14th day of August, 2008.



Donald W. Molloy, District Judge
United States District Court

